

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1817 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgement?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 to 5 : No

BHAVANBHAI CHAKUBHAI

Versus

TILUMAL CHHATUMAL

Appearance:

SHRI SURESH M SHAH for Petitioner

SHRI PM THAKKAR for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 22/07/98

CAV JUDGEMENT

This is a tenant's revision under Section 29(2) of the Bombay Rent Act, 1947.

2. The brief facts essential for disposal of this

revision are as under:

The disputed accommodation owned by the plaintiff respondents was, according to them, in the tenancy of the tenant-revisionist, on a monthly rent of Rs.18.25 ps. He fell in arrears of rent for 12 months. Hence, notice of demand dated 29th August 1973 was sent which was served upon the tenant, but he failed to comply with the same within a month of service of notice of demand. Consequently, the decree for eviction was sought on this ground. In addition to this, eviction was sought on the ground that the defendant had acquired another house at Laxmiwadi Street No.3, at Rajkot, where he had shifted with his family and this is suitable for his residence. The third ground for eviction was that the defendant had illegally sublet the entire accommodation to his brother, Popat Chaku and transferred or assigned his interest in the suit premises to his brother aforesaid.

3. The suit was resisted by the defendant revisionist on the ground that his father was the tenant of the demised premises and after his death, the tenancy devolved upon him, his brother and his mother who were residing in the tenanted accommodation. He has also disputed the standard rent to be Rs.2/- per month. It was increased to Rs.13.25 ps. per month and it was further increased after the plaintiff's purchase, to Rs.18.25 ps. per month. The allegation of subletting was denied. So also the allegation that the defendant has acquired alternative suitable accommodation for himself. It was also denied that he was in arrears of rent.

4. The suit was decreed by the trial Court. An appeal was preferred which was also dismissed and hence this revision.

5. Shri S.M.Shah, learned Counsel for the revisionist contended that the approach of the two Courts below was erroneous and since the defendant raised the question of transmission of tenancy within the meaning of Section 5(11)(c)(i) of the Bombay Rent Act (for short Act) and unless this question was decided, the suit could not have been proceeded with. This argument was also raised in the trial Court which did not find favour with the said Court. It was further contended by Shri Shah that an issue should have been framed on this point, which was not done by the trial Court which has vitiated the trial. Likewise he contended that unless the question of devolution of tenancy is determined, the suit could not have been decreed on any of the three grounds

on which eviction was sought by the landlord. Likewise he contended that the landlord has failed to establish the relationship of landlord and tenant between him and the defendant.

6. In order to appreciate these contentions, the provision of Section 5(11)(c)(i) which reads as under, has to be kept in mind:

"The tenant means, any person by whom or on whose account rent is payable for any premises and includes--

in relation to premises let for residence, any member of the tenant's family residing with the tenant at the time of, or within three months immediately preceding, the death of the tenant as may be decided in default of agreement by the Court".

It is thus clear that this provision could be attracted only when it is proved that the father of the defendant was the tenant. Admittedly, the father of the defendant, Chakubhai Savajibhai died more than 20 to 25 years back and somewhere between 1955 to 1960, as has been observed by the lower Appellate Court. If however, it is established that the defendant is the tenant of the disputed accommodation, then Section 5(11)(c)(i) aforesaid will not be applicable.

7. The question of relationship of landlord and tenant between the plaintiff and the defendant is a pure question of fact and since concurrent finding has been recorded by the two Courts below that the defendant was the tenant and not his father, the scope of interference on this concluded finding is very much minimised. Unless a finding is recorded by the revisional Court that the findings of the two Courts below on this question are perverse or no reasonable man from the evidence on record could have reached such conclusion, the revisional Court will normally not interfere in such finding. It is not a case where the finding is the result of mis-appreciation of evidence on record. It is also not a case where the two Courts below proceeded to appreciate the evidence on record by placing wrong onus of proof on the defendant. Moreover, the question of onus of proof loses its significance after the parties have adduced evidence in support of their cases. The evidence has then to be assessed, scrutinised and examined and finding is to be given as to whose evidence is more reliable.

8. It is true that the plaintiff is a subsequent purchaser. The original owner was Navrangbhai from whom the plaintiff purchased the property in the year 1960. It is also true that the plaintiff has stated in the witness box that he does not know to whom the tenancy was granted by Navrangbhai. However, this ignorance is not enough to disbelieve the plaintiff. When the evidence has been adduced by both the parties, the plaintiff can equally rely upon the evidence adduced by the defendant-tenant. In so doing, the plaintiff may not be seeking advantage of the weakness in defence case. The fact which is admitted in the defendant's evidence can safely be relied upon by the plaintiff and he is not required to prove the said fact.

9. It is equally true that Navrangbhai, the original owner was not examined by the plaintiff. Likewise, Mansukhbhai, who was managing the property on behalf of Navrangbhai has not been examined by the plaintiff. But, for this failure, no adverse inference can be drawn against the plaintiff. Mansukhbhai was issuing rent receipts in the diaries, Exh.42 and 43 maintained by the defendant. One diary commenced from 1954 and the other from 1960. It has been observed by the lower Appellate Court that the defendant's father died about 20 to 25 years back and in the calculation of the Appellate Court, the defendant's father died somewhere between 1955 to 1960. The first diary commenced from 1954. In both the diaries, the defendant, Bhavanbhai Chakubhai is shown as the tenant. No objection was raised why the receipt was not issued in the name of the defendant's father. These receipts in these diaries were issued by Mansukhbhai, the Manager of the previous owner, Navrangbhai. If admittedly, according to the defendant, these receipts were issued, their non-production is not vital to the case of the plaintiff. The defendant himself could have raised objection before Mansukhbhai that these receipts be issued in the name of the real tenant, namely, his father and not in his name. That was not done. So this is one evidence on the side of the defendant himself which indicated that the Manager of the previous owner always treated the defendant to be the tenant. Consequently, the ignorance of the plaintiff will not stand in his way.

10. The second set of evidence is contained in various Money Orders sent by the defendant's brother Popat Chaku. Exh.32 and 34 are two Money Orders through which the rent was remitted by the defendant's brother, Popat Chaku to the plaintiff and in these Money Orders, the defendant was shown to be the tenant of the disputed

premises. Exh.47 and 48 are two other Money Orders which were sent to the plaintiff after the receipt of notice in suit, Exh.25. In these Money Orders also it was not mentioned that the defendant's father was the tenant and after his death, all his heirs inherited the tenancy right. Exh.45 is another Money Order in which also the defendant is shown to be the tenant in the disputed house. This Money Order too was sent by the defendant's brother.

11. In addition to above, the defendant has stated on oath that he has no written proof to show that his father was the tenant and he took the premises on rent from the previous owner.

12. Thus, if during this long interval of several years the defendant was treated to be the tenant by the Manager of the previous owner and the defendant himself authorised his brother to send rent by Money Orders projecting him to be the tenant, then these factors were rightly taken into consideration by the lower Appellate Court and the lower Appellate Court committed no illegality in ignoring the ignorance of the plaintiff as to whom the tenancy was granted by the previous owner. For all purposes, the receipts contained in the diaries, Exh.42 and 43 will amount to admission of the defendant that he was always treated as tenant by the previous owner and subsequent purchaser likewise treated the defendant as his tenant. In this view of the matter, the two Courts below did not commit any illegality in recording the finding that the defendant was the tenant of the plaintiff.

13. In view of the above finding, the two Courts below were justified in not taking notice of Section 5(11)(c)(i) of the Act because this Section will be attracted only when it is proved that the defendant's father was the tenant. Since it is not proved, there was no necessity to decide first the question of devolution of tenancy within the meaning of the aforesaid provision. As such, the lower Appellate Court committed no illegality in not remanding the matter for decision on the question of devolution of tenancy.

14. The two Courts below have recorded concurrent findings that the landlord is entitled to decree of eviction under Section 13(1)(e) of the Act as well as under Section 13(1)(l) of the Act and that the tenant is not entitled to protection of Section 12(3)(b) of the Act. The reasons have also been assigned and I do not find any error in recording these three findings. They

are based on proper appreciation of evidence on record.

15. There is categorical finding of the two Courts below that the defendant has shifted to another house. It is also in evidence that the rented accommodation is now in exclusive possession of the defendant's brother, Popat Chaku. Popat Chaku is not residing as heir of the deceased tenant. He is also not residing as brother of the tenant. The defendant has permanently shifted to another house and has handed over possession of the entire accommodation to Popat Chaku. The Courts below were further justified in drawing inference that this was done for valuable consideration. Thus, the allegation of subletting on the facts and circumstances of the case was fully established from the evidence on record and the decree for eviction could be passed on this ground.

16. So far as the ground of tenant-defendant acquiring suitable accommodation for himself is concerned, this ground was also fully established. The plea of the defendant that the other house was purchased by his wife was rightly repelled by the two Courts below. No doubt, the sale deed is in the name of the wife of the defendant, but the defendant's own admission shows that actually he purchased the house and gave the sale consideration. On these facts and admission, the Courts below were justified in concluding that the sale deed in the name of the defendant's wife was a benami transaction. There is also concurrent and correct finding of fact recorded by the two Courts below that the said alternative accommodation is suitable for the residence of the defendant. Thus, on this ground also, decree for eviction was rightly passed.

17. The decree for eviction was also sought under Section 12(3)(a) of the Act. No doubt, some dispute regarding the standard rent was raised, but that dispute does not appear to be bona fide. The rent was not paid within a month of service of notice of demand and as such, the decree for eviction could be passed under Section 12(3)(a) of the Act. In the alternative, the Courts below found that the defendant was not entitled to the benefit under Section 12(3)(b) of the Act. This finding also does not suffer from any infirmity or mis-appreciation of the evidence on record. The tenant who had failed to make compliance of the requirements of Section 12(3)(b) of the Act, was obviously not entitled to the protection given under this Section.

18. For the reasons given above, no merit is found in this revision which is liable to be dismissed. The

revision is accordingly dismissed. The parties shall
bear their own costs.

sreeram.